

MAR 15 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACQUES GARABET MAKSOUDIAN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

Nos. 04-74113

04-76127

Agency No. A94-211-943

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Jacques Garabet Maksoudian, a native and citizen of Lebanon, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen, which alleged ineffective assistance of counsel, as well as the BIA's order denying a subsequent motion to reconsider. We have jurisdiction pursuant to 8

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. Reviewing for abuse of discretion, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), we deny the petitions for review.

The BIA did not abuse its discretion in refusing to apply equitable tolling in this case. Equitable tolling of deadlines for motions to reopen applies “during periods when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error.” *Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003). Maksoudian’s admission that he waited almost two years for our decision in his prior petition for review before filing the motion to reopen at issue does not demonstrate the required due diligence. Accordingly, the BIA acted within its discretion in denying Maksoudian’s motion to reopen and his motion to reconsider on the ground that he is ineligible for equitable tolling.

We are unpersuaded by Maksoudian’s contention that the BIA violated due process by applying the limitations of 8 C.F.R. § 1003.2(c)(2) to his motion to reopen despite his subsequent eligibility for adjustment of status. We also reject the contention that the BIA failed to consider whether to reopen Maksoudian’s proceedings *sua sponte*.

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004).

PETITIONS FOR REVIEW DENIED.